

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JACE BOSTON, LLC and ARTHUR LEON,
Plaintiffs

v.

LANDMARK AMERICAN INSURANCE CO.,
AMERICAN SAFETY INDEMNITY CO., FIRST
MERCURY INSURANCE CO., and
NAVIGATORS SPECIALTY INSURANCE CO.,
Defendants

No.

(Removed from Suffolk Superior Court
No. 2184CV01056)

NOTICE OF REMOVAL

Defendant Navigators Specialty Insurance Co., (“Navigators”), by its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, hereby removes the above-captioned action, filed in the Massachusetts Superior Court, Suffolk County, No. 2184CV0 1056, pursuant to 28 U.S.C. §1441 *et seq.* and in support thereof states as follows:

1. On May 6, 2021, Plaintiffs Jace Boston, LLC and Arthur Leon (“Plaintiffs”) commenced this action by filing a Complaint in the Superior Court for Suffolk County, Massachusetts.

2. Plaintiff caused the Summons and Complaint to be served on Navigators by serving it on the Massachusetts Commissioner of Insurance on June 11, 2021. A copy of the Summons and Complaint, Civil Action Cover Sheet and Civil Tracking Order received by Navigators is attached as **Exhibit 1**.

3. The Summons and Complaint were received by Navigator’s registered agent for service of process, CT Corporation System on June 17, 2021.

4. This Notice is thus being filed within thirty days after Navigators received the initial pleading in this action and within one year of the institution of Plaintiff's suit, in compliance with 28 U.S.C. §1446.

5. All defendants join in and consent to the removal of this action. 28 U.S.C. §1446(b)(2)(A).

6. Plaintiff Jace Boston, LLC ("Jace") alleges it is a Massachusetts limited liability company with a principal place of business in Boston, Massachusetts. **Exhibit 1** at ¶ 4. On information and belief, Jace is a single member limited liability company, the sole owner of which is Plaintiff Arthur Leon. *See 477 Harrison Ave., LLC v. Jace Boston, LLC*, 477 Mass. 162, 164 (2017) (noting Mr. Leon is the sole owner of Jace).

7. Plaintiff Arthur Leon ("Leon") alleges he is an individual and resident of Westwood, Massachusetts.

8. Defendant Navigators is a New York insurance corporation with a principal place of business in Connecticut.

9. Although Plaintiff alleges that Defendant Landmark American Insurance Company ("Landmark") is a Colorado insurance corporation with a principal place of business in Colorado, **Exhibit 1** at ¶ 6, Landmark is an Oklahoma corporation with a principal place of business in Georgia, as evidenced by publicly available records maintained by the Massachusetts Division of Insurance.

10. The Complaint alleges that Defendant American Safety Indemnity Company ("American Safety") is a Georgia insurance corporation with a principal place of business in Georgia. **Exhibit 1** at ¶ 7. However, in 2016, American Safety was merged with TIG Insurance

Company (“TIG”). TIG is a California insurance corporation with a principal place of business in New Hampshire.

11. Although Plaintiffs allege that Defendant First Mercury Insurance Company (“First Mercury”) is an Illinois insurance corporation with a principal place of business in Michigan, **Exhibit 1** at ¶ 8, First Mercury is a Delaware corporation with its main administrative office located in New Jersey.

12. In this action, Plaintiff alleges that Navigators, Landmark, American Safety, and First Mercury each issued commercial general liability (“CGL”) policies to American Crane & Hoist Corporation (“AC&H”) for successive years between 2012 and 2015 (“the Policies”). Specifically, Plaintiff alleges Landmark’s policy was effective January 1, 2012, to January 1, 2013, American Safety’s policy was effective January 1, 2013 to January 1, 2014, First Mercury’s policy was effective January 1, 2014 to January 1, 2015, and Navigators’ policy was effective January 1, 2015 to January 1, 2016. **Exhibit 1**, ¶¶ 12-19.

13. Jace alleges it is an additional named insured under the Policies, and Leon alleges he is an officer and Director of AC&H, and therefore entitled to coverage under the Policies.

14. Plaintiffs were sued in Suffolk County Superior Court on March 23, 2015, in an action styled *477 Harrison Ave., LLC v. JACE Boston, LLC and Arthur Leon*, No. 1584cv000829 (“the Underlying Litigation”). **Exhibit 1**, ¶ 22.

15. Plaintiffs claim that abuse of process claims asserted against them in the Underlying Litigation constitute covered claims under the “personal and advertising injury” provisions in each of the Policies, but that each of the Defendants has denied coverage thereby breaching their asserted obligation to provide Jace and Leon defense and indemnification coverage for the Underlying Litigation.

16. Plaintiffs' Complaint asserts counts for Declaratory Judgment and Breach of Contract against each of the Defendants which allege that each of the Policies provide coverage for the abuse of process claims asserted in the Underlying Litigation.

17. Plaintiffs allege that as a result of the Defendants' respective refusals to provide coverage, "[t]hey have spent, and continue to spend, significant amounts in defense costs alone," and that the plaintiff in the Underlying Litigation "is pursuing millions of dollars of damages from Plaintiffs." **Exhibit 1** at ¶ 32.

18. Plaintiffs' Civil Action Cover Sheet indicates Plaintiffs seek over \$100,000 in damages. *See* **Exhibit 1** at p. 7.

19. As Plaintiffs are citizens of Massachusetts and each Defendant is a citizen of a different state there is complete diversity. Because there is complete diversity and the amount in controversy in this case is in excess of \$75,000, this Court may exercise jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332.

20. This action may be removed to this Court by Navigators pursuant to 28 U.S.C. §1441(a) in that this case was initially brought in a state court within the geographical area of the District of Massachusetts, and in that this Court has jurisdiction pursuant to 28 U.S.C. §1332(a).

21. The documents attached hereto as **Exhibits 1** and **2** constitute copies of all pleadings received by Navigators to date.

22. Pursuant to 28 U.S.C. 1446(d), a true and correct copy of this Notice of Removal is being filed this date with the Suffolk Superior Court, along with a Notice of Filing Notice of Removal, which will be served on all parties. A copy of the Notice of Filing Notice of Removal is attached hereto as **Exhibit 3**.

WHEREFORE, defendant Navigators hereby removes this action from the Suffolk County Superior Court to the United States District Court for the District of Massachusetts.

Dated: July 7, 2021

Respectfully submitted,
Defendant,
NAVIGATORS SPECIALTY INSURANCE
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By its attorneys

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CERTIFICATE OF SERVICE

I, Kara Thorvaldsen, certify that on this date, the foregoing document was served on counsel of record via email as follows:

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